Cour fédérale

Date: 20181219

Docket: IMM-1825-18

Citation: 2018 FC 1283

Toronto, Ontario, December 19, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

AILYN DELA CRUZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Cruz, a citizen of the Philippines, applied under the live-in caregiver program for a work permit in Canada. In response to the refusal of her application, Ms. Cruz filed this judicial review. For the reasons set out below, I will not interfere with the visa officer's decision.

I. Overview

[2] The officer refused Ms. Cruz's first work permit application as a live-in caregiver in October 2017. Due to procedural fairness concerns, the visa officer agreed to reopen the application under the same labour market impact assessment. Ms. Cruz was convoked for a reconsideration interview in February 2018 at the Embassy in Makati City, Philippines. However, her application was refused again after the interview. The officer concluded that Ms. Cruz did not meet the job requirements of her prospective employer in Canada, or have the requisite knowledge of the patient's medical condition to ensure proper care and safety. The officer also ruled that Ms. Cruz would not leave Canada by the end of the period authorized for her stay.

II. Issues and Analysis

[3] Ms. Cruz initially challenged the decision both on the grounds of procedural fairness and reasonability. However, in light of responses received during cross-examination, Ms. Cruz resiled from the procedural fairness issue, which will therefore not be addressed in these reasons. That leaves the issue of whether the officer erred in assessing Ms. Cruz's ability to meet the job requirements. The applicable standard of review is reasonableness (*Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at para 12).

[4] Ms. Cruz argues that the officer erred in the decision by (i) using subjective criteria to determine that Ms. Cruz did not meet the requirements of the job offer; and (ii) failing to consider documentary evidence demonstrating Ms. Cruz's relevant work experience, and the fact

that her prospective Canadian employer had already assessed her experience as being adequate for the position. Ms. Cruz further argues that this Court has held that the absence of an objective standard against which to assess an applicant's level of qualification for the job requirements is unreasonable (*Russom v Canada (Citizenship and Immigration)*, 2012 FC 1311 at para 20).

[5] The Respondent counters that the officer properly reviewed and assessed the evidence, and reasonably found that Ms. Cruz did not meet the job requirements. The Respondent notes that the officer reasonably found that while Ms. Cruz met the educational requirements, she did not have work experience or knowledge of her prospective patient's ailments, and as a result, failed to meet the requirements of paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations* [IRPR], SOR/2002-227.

[6] I cannot agree with Ms. Cruz's contention that the officer used subjective or arbitrary criteria to determine that she did not meet the requirements of the job offer. Rather, the officer used a combination of common sense, and the information contained in the LMIA regarding Ms. Cruz's position, to conclude that she did not have the abilities to adequately undertake the work that would be required of her.

[7] In addition to the fact that this conclusion was open to the officer, this Court's jurisprudence is clear that officers are under a duty to conduct an independent assessment of a temporary work permit applicant's ability to perform the work sought (Bautista v Canada (Citizenship and Immigration), 2018 FC 669 at para 15 [Bautista]). This duty comes directly from section 200 of the IRPR which requires that before issuing a work permit, an officer must

be satisfied on various points, including that a foreign national will leave Canada by the end of the period authorized for his/her stay. This regulation also stipulates that an officer shall not issue a work permit where there are reasonable grounds to believe that a foreign national is unable to perform the work sought (see Annex A for the relevant section of the IRPR).

[8] Ultimately, the officer must assess the employer's ability to fulfill the terms of the job offer (*Bautista* at para 15; *Singh v Canada (Citizenship and Immigration*, 2015 FC 115 [*Singh*] at para 20). The onus is on Ms. Cruz to present sufficient materials to satisfy the officer that she could fulfill the job duties (*Singh* at para 25). In this case, she failed to do so. Ms. Cruz also failed to satisfy the officer with her responses at the visa office interview: the officer asked Ms. Cruz very rudimentary questions about what she would have to do to carry out her position. Her responses did not demonstrate that she was aware of the challenges associated with taking care of an elderly person affected with Parkinson's disease and dementia.

[9] Furthermore, I cannot agree with Ms. Cruz's argument that the officer ignored evidence, and would have arrived at a different conclusion with respect to her ability to meet the job requirements, had that evidence demonstrating her relevant work experience been properly considered. I find that the officer did not ignore this evidence. The decision referred to Ms. Cruz's past employment, both remunerated and volunteer, at three different workplaces.

[10] Again, the officer found that the evidence was not sufficient to demonstrate that Ms. Cruz had the requisite knowledge and experience to adequately provide care to a patient with specialized needs arising from two significant medical conditions. Neither Ms. Cruz's education nor her

experience indicated that she possessed any knowledge of safety strategies to protect elderly persons suffering from dementia and Parkinson's disease in a home setting. The officer found her responses to be vague with respect to both the symptoms of the conditions, and the associated caregiving requirements.

[11] This outcome was open to the officer. There is a qualitative difference between providing generalized caregiving services for the elderly who are in relatively good health and simply need assistance with day-to-day needs, and providing caregiving services for an elderly person affected with both Parkinson's and dementia. I do not find that it was unreasonable for the officer to have made observations within that frame of reference.

[12] Ms. Cruz relies on *Sevilla v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 424 at paragraph 14, in which Justice MacDonald concluded that the officer erred by using an arbitrary benchmark that had no foundation in law, due to the fact that the officer refused the work permit application because s/he was not satisfied the applicant had the necessary 1-2 years of caregiving experience, but failed to explain how the benchmark related to the requirement in paragraph 200(3)(a) of the IRPR.

[13] In contrast, in the case at bar, the officer provided detailed reasons for the decision largely based on the LMIA and the requirements referenced therein (including the relevant National Occupational Classification) as well as the specific circumstances and medical conditions with which Ms. Cruz would be required to work. Ultimately, the role of an officer is not only to assist in facilitating the movement of foreign nationals and workers as set out in

paragraph 3(1)(g) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], but also to ensure that they can satisfy the requirements of their prospective employment, which ensures the protection of the health and safety of Canadians (IRPA, s 3(1)(h), IRPA, see Annex A).

[14] Finally, while Ms. Cruz also challenged the officer's conclusion that she would not leave Canada at the end of her temporary stay. First, I note that this is a highly discretionary ground. This was a secondary basis for the refusal of the work permit application, which is certainly not unique to this case (see, for instance, *Sadiq v Canada (Citizenship and Immigration)*, 2015 FC 955 at paras 22–23; *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 23).

[15] In any event, given that the application, interview, decision and reasons, as well as the Federal Court hearing focused on the determinative employment issue, I find no need to address the secondary issue, as I would still find the refusal to be reasonable even if the secondary finding was unwarranted.

[16] I would only add by way of closing that both counsel served their clients ably. Both were highly professional. Despite being unable to overcome the deferential standard that applied to his client's judicial review, Ms. Cruz should know that Mr. Afzali represented her position admirably.

III. Conclusion

[17] As the officer made no reviewable error, the application is dismissed. Neither party raised a question for certification. I agree that none arise.

JUDGMENT in IMM-1825-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and none arise.

3. There is no award as to costs.

"Alan S. Diner"

Judge

Annex A

Immigration and Refugee Protection Act, SC 2001, c-27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch. 27
3 (1) The objectives of this Act with respect to immigration are	**3 (1)** En matière d'immigration, la présente loi a pour objet :
…	…
(g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;	**g)** de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;
…	…
(h) to protect public health and safety and to maintain the security of Canadian society;	**h)** de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;

Immigration and Refugee Protection Regulations, SOR/2002-27

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national

…

(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and

(3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

c) il se trouve dans l'une des situations suivantes :

(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à e);

(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :

a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;

FEDERAL COURT

SOLICITORS OF RECORD

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